

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

HARVEY A. BATTLES

PLAINTIFF

V.

4:08CM00037-01JMM

DAMASCUS CITY COURT

DEFENDANT

ORDER

Pending before this Court is the Plaintiff's Motion to Proceed *In Forma Pauperis*. The *In Forma Pauperis* statute, 28 U.S.C. § 1915, is designed to ensure "that indigent persons will have equal access to the judicial system." *Greaser v. State of Mo., Dep't of Corrections*, 145 F.3d 979, 985 (8th Cir. 1998). The decision of whether to grant or deny *in forma pauperis* status under section 1915 "is within the sound discretion of the trial court." *Cross v. General Motors Corp.*, 721 F.2d 1152, 1157 (8th Cir. 1983). Further, a district court must dismiss the case at any time if the court determines that the action is frivolous, malicious or fails to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2).

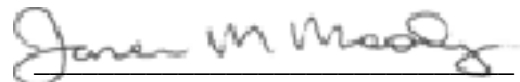
Plaintiff Harvey Battles filed a Notice of Removal of this action from Damascus City Court of Van Buren, Arkansas to federal district court. Plaintiff states that he is removing the action pursuant to 28 U.S.C. § 1443. Plaintiff states that the Defendant has violated his constitutional rights under 42 U.S.C. §§ 1345, 1331 and 1330 when he was illegally incarcerated in the Van Buren County Regional Detention Center. Plaintiff also makes reference to a bankruptcy petition which he filed in the United States Bankruptcy Court. Plaintiff states that "all parties are now in violation of the Automatic Stay." (Notice of Removal, at p. 3).

Section 1441 provides an avenue for defendants in a state court suit to remove the cause of action against them to a more neutral forum, federal court, if the state court case involved an

action “which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441. From the pleadings it appears that Plaintiff seeks, not to remove the case of City of Damascus v. Harvey A. Battles, but to institute a new action against the City of Damascus for violation of his civil rights. It is unclear from the record what claims exist in the underlying municipal court case against Mr. Battles and, therefore, whether the Court has jurisdiction over those claims. It is clear, however, that Plaintiff has misunderstood the removal statutes.

Accordingly, the Plaintiff’s Motion to Proceed *In Forma Pauperis* is DENIED. Plaintiff’s cause of action is DISMISSED without prejudice for lack of jurisdiction. Plaintiff, however, may file suit against a defendant by filing a Complaint which complies with the Federal Rules of Civil Procedure, including Rules 8, 9, 10 and 11.

IT IS SO ORDERED this 24th day of March 2008.

A handwritten signature in dark ink, appearing to read "James M. Moody", is written over a horizontal line.

James M. Moody
United States District Judge